



DOCKET FILE COPY ORIGINAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

200 PORTLAND STREET
BOSTON, MASSACHUSETTS 02114

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200

April 16, 1999

SENT VIA FEDERAL EXPRESS

Magalie Roman Salas, Secretary
Federal Communications Commission
Portals II, 445 12th Street SW
Suite TW-A325
Washington, DC 20554

RECEIVED
MAY 6 1999
FCC MAIL ROOM

**RE: File No. NSD-L-99-17, DA 99-460, CC Docket 96-98, and
File No. NSD-L-99-19, DA 99-461, CC Docket 96-98**

Dear Ms. Salas:

Enclosed for filing in the above matter please find one original and six copies of the Attorney General's Reply Comments in the above-referenced proceedings.

Thank you for your attention to this matter.

Sincerely,

Daniel Mitchell
Assistant Attorney General
Regulated Industries Division
200 Portland Street, 4th Floor
Boston, MA 02144

enclosure

No. of Copies rec'd
List ABCDE

046



**UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION**

RECEIVED
MAY 6 1999
FCC MAIL ROOM

)
Common Carrier Bureau's Request for)
Comments on the Massachusetts)
Department of Telecommunications)
and Energy's Petition for Waiver to)
to Implement a Technology Specific)
Overlay in Area Codes 508, 617, 781,)
and 978)
_____)

NSD File No. L-99-17
DA 99-460
CC Docket 96-98

)
Common Carrier Bureau's Request for)
Comments on the Massachusetts)
Department of Telecommunications)
and Energy's Petition for Additional)
Authority to Implement Various Area)
Conservation Methods in the 508, 617,)
781, and 978 Area Codes)
_____)

NSD File No. L-99-19
DA 99-461
CC Docket 96-98

**REPLY COMMENTS OF THE MASSACHUSETTS ATTORNEY GENERAL
ON THE PETITIONS OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
SEEKING WAIVERS OF THE PROVISIONS OF 47 C.F.R. § 52.19(c)(3)
TO ORDER TO IMPLEMENT
A TECHNOLOGY-SPECIFIC OVERLAY AND AREA CODE CONSERVATION
IN THE 508, 617, 781 AND 978 AREA CODES**

The Attorney General of the Commonwealth of Massachusetts ("Attorney General") hereby urges the Federal Communications Commission ("Commission" or "FCC") to grant the petitions filed by the Massachusetts Department of Telecommunications and Energy seeking waivers from the provisions of 47 C.F.R. Section 52.19(c)(3).¹ (hereinafter "Massachusetts Waiver Petitions" or "Petitions"). The Petitions were filed to clarify the

¹ On February 12, 1999, the Department filed a Petition with the Federal Communications Commission ("Commission") requesting a waiver of 47 C.F.R. Section 52.19(c)(3), which would allow the Department to investigate and possibly permit implementation of a service-specific or technology-specific area code overlay in the eastern Massachusetts LATA. On February 17, 1999, the Department filed a Petition with the Federal Communications Commission ("Commission") requesting waiver of provisions in 47 C.F.R. Section 52.19(c)(3) in order to authorize the petitioner to implement various area code conservation measures in the eastern Massachusetts LATA currently served by the 508, 617, 781 and 978 area codes.

Commonwealth's authority to take necessary and appropriate steps to improve the management of the number resources available for telecommunications services within Massachusetts so as to avoid the substantial and unnecessary public inconvenience and expenditure of resources that would result from the addition of additional area codes within eastern Massachusetts. For the reasons stated below, the Attorney General submits that the Commission should grant the Waiver Petitions and find that the area code conservation and relief measures considered by the Commonwealth would not compromise the North American Numbering Plan by interfering or preventing the routing of calls in the United States.²

As described in the Petitions, Massachusetts had not even completed implementation of the geographic split of the 617 and 508 area codes when, in the spring of 1998, Lockheed Martin announced that not only were these two codes again in a jeopardy situation, but that the 781 and 978 area codes were also facing a jeopardy situation. Given that the recent addition of new area codes makes approximately 32 million numbers available for use as telephone numbers in eastern Massachusetts, an area with roughly 4 million residents and 4 million subscriber lines, it is clear that the present numbering shortage is not the result in any shortage of numbers but rather is a monumental failure to manage a more than adequate inventory of numbers. In these circumstances, the Commonwealth is considering all reasonable means to avoid the substantial inconvenience and cost to the public that would be occasioned by the wholly unnecessary creation of even more new area codes. Among the means under consideration are the following area code conservation alternatives that would allow better use of the several million unused numbers in the current inventory available in eastern Massachusetts: (1) reclaim unused and reserved exchange codes; (2) maintain the current central office code rationing measures for at least six months following implementation of area code relief plans in the 508, 617, 781 and 978 NPAs; (3) revise existing industry rationing procedures; (4) hear and address claims of carriers seeking additional codes outside of the rationing plan; (5) set code allocation standards for use during non-jeopardy situations; (6) institute thousand number block pooling; (7) implement extended local calling areas for wireless carriers; (8) implement inconsistent rate centers for competitive local exchange carriers; and (9) implement unassigned number porting. In addition, the Commonwealth has opened concurrent investigations to review alternative area code relief plans (D.T.E. 99-11), including a service or technology-specific overlay, and rate center consolidation, including an examination on the impact of rate center consolidation on the need for new area codes (D.T.E. 98-38).

While the Attorney General recognizes that the FCC is actively considering various numbering optimization measures and that there are practical concerns about the simultaneous development of measures at the state and federal levels, he is confident that the efforts of Massachusetts can be made compatible with and, indeed, would likely further the more far

² The Attorney General's reply comments respond to several of the issues raised in initial comments filed in these proceedings. Silence regarding any specific argument raised in any of the initial comments filed by other parties, however, should not be taken as agreement by the Attorney General with such an argument.

reaching efforts undertaken by the FCC to improve the optimization of the use of numbering resources. There is much work to be done and there are limited regulatory resources to address a complex problem that requires a timely solution. By permitting Massachusetts to move forward in a comprehensive examination of the potential role of different number optimization measures in addressing the numbering needs of the Commonwealth (which could, among other things, address the relationship of state efforts to federal efforts), the FCC will have access to the Massachusetts' complementary analysis and regulatory resources for national use.

Moreover, although the Commission previously found technology- or service-specific area code overlays to be discriminatory and to potentially inhibit competition, the Attorney General submits that it also plain that the disruption, confusion and cost to the public associated with implementing new area codes are significant, and that state regulators are in the best position to strike the appropriate balance between these competing concerns.³ They are in the best position to investigate and weigh the advantages of such an overlay with the possible disadvantages in view of the local market conditions.⁴ The Commonwealth, in seeking to *investigate* the benefits and drawbacks of a technology- or service-specific overlay code, is attempting to protect customers from unduly burdensome costs and inconveniences that may well be avoided *without* an adverse effect on the competitive local telecommunications market in Massachusetts.

Massachusetts is currently faced with NXX code exhaustion in four area codes notwithstanding the fact that in 1996 the North American Numbering Administrator projected that the addition of new area codes would provide a sufficient inventory of numbers to last for another 10-15 years. It is obvious that the impact, if not the extent of local service competition was severely underestimated. Given the current state of affairs, there is an immediate and pressing need for solutions to a wholly avoidable numbering crisis in order to spare Massachusetts residents and businesses the burdens that will result from addition of yet another four new area codes. The Attorney General submits that state regulators, in collaboration with service providers and consumers active in the market, are best positioned to explore the impact

³ The FCC has recently carved out a special exemption for the cellular industry which postpones the time by which the CMRS industry must support service provider LNP from June 30, 1999 until November 24, 2002, which effectively postpones the date by which cellular carriers can participate in number pooling - one of the most effective ways of optimizing the utilization of numbers. *In the Matter of Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order, released February 9, 1999. Similarly, the FCC should permit Massachusetts to investigate fully the merits and drawbacks of technology-specific overlays.

⁴ The FCC has relied on the assumption that a technology-specific overlay would discriminated against wireless service providers in previous decisions against such overlays. *In Re Implementation of the Local Competition Provisions of the Telcom. Act of 1996*, Second Report and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19518 (1996); *In Re Ameritech's 708 and 603 Area Code Plans*, Declaratory Ruling and Order 10 FCC Rcd. 4596, 4608 (1995). In Massachusetts, however, virtually no competition exists between wireline and wireless service providers.

of any particular number optimization measure on the goal of promoting of efficient competition.

To best address the issue of area code relief in a manner that is fair to consumers and competitors in eastern Massachusetts, the Commonwealth must have the authority to consider the *full array* of feasible number optimization measures. The ability to implement the appropriate number optimization measures based upon a comprehensive examination of a full array of methods will help mitigate the need for additional area codes, while ensuring that new entrants have adequate access to numbering resources.

It should be emphasized that the Attorney General is aware that any area code conservation measures or area code relief plan must be implemented in a manner that will not interfere or prevent the routing of calls and not interfere or prevent carriers from providing their customers with telephone numbers. The Commonwealth seeks to implement conservation measures or a relief plan that will not compromise the integrity of the North American Numbering Plan. If the Commonwealth, after full consideration of all the alternatives described in the Petitions, develops an area code conservation plan or a relief plan to prevent the need for new area codes in eastern Massachusetts, the Attorney General recommends that the FCC, if it believes it is necessary, reserve review and approval prior to implementation of the plan as a condition of the waivers.

The Attorney General recognizes that the FCC is committed to solving the seemingly ever-present problems associated with area code relief and urges the Commission to grant the Waiver Petitions so that the Massachusetts may continue to further explore and investigate numbering optimization and area code options that are compatible with the goal of promoting competition in Massachusetts and throughout the United States.

Respectfully submitted,

THOMAS F. REILLY
MASSACHUSETTS ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Daniel Mitchell", is written over a horizontal line.

Daniel Mitchell
Assistant Attorney General
Regulated Industries Division
200 Portland Street, 4th Floor
Boston, MA 02114
617-727-2200

April 16, 1999